(18,720.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 492.

JAMES L. HYATT, AS CHIEF OF POLICE OF THE CITY OF ALBANY, N. Y., PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF CHARLES E. CORKRAN.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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a STATE OF NEW YORK:

Court of Appeals.

To the justices of the Supreme Court of the United States:

The judges of the court of appeals of the State of New York, do hereby make answer and return to the writ of error issued herein to said court by attaching hereto a transcript of the record and judgment of this court, in the case of The People *ex rel.* Charles E. Corkran, against James L. Hyatt, as chief of police of Albany, plaintiff in error, together with all things touching the same, which we certify and return under the seal of our said court to the Supreme Court of the United States and the justices thereof, as we are herein commanded.

In witness whereof, I have hereunto set my hand and affixed my official seal at the city of Albany, this twenty-seventh day of October, A. D., one thousand nine hundred and two.

Seal Court of Appeals, State of New York.

W. H. SHANKLAND, *Clerk.*

b In the Court of Appeals.

THE PEOPLE *ex Rel.* CHARLES E. CORKRAN, Appellant,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, Respondent.

Papers on Appeal from Order.

Messrs. Scherer & Downs, attorneys for James L. Hyatt, as chief of police of the city of Albany, and Vernon Sharp, agent for the State of Tennessee.

Hon. George Addington, district attorney of Albany county.

Messrs. Moot, Sprague, Brownell & Marcy, attorneys for Charles E. Corkran.

1 In the Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany.

Statement.

Appeal from an order of the special term of the supreme court, held by Mr. Justice Herrick, at Albany, New York, March 19, 1902, filed March 20, 1902, in the Albany county clerk's office, dismissing a writ of *habeas corpus* granted herein on the 13th day of March, 1902, and refusing the application of the relator, to discharge him from custody.

Petition for Writ of Habeas Corpus.

Hon. D. Cady Herrick, justice of the supreme court of the State of New York:

The petition of Charles E. Corkran respectfully shows that
2 he is imprisoned and restrained in his liberty at the second precinct station-house in the city of Albany, N. Y., by James L. Hyatt, chief of police of the city of Albany; that he has not been committed and is not detained by virtue of any judgment, decree, final order, or process issued by a court or judge of the United States, in a case where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of legal proceedings in such a court; nor is he committed or detained by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such a tribunal made in a special proceeding instituted for any cause except to punish him for a contempt; or by virtue of an execution or other process issued upon such a judgment, decree or final order; that the cause or pretence of the imprisonment or restraint of petitioner, according to the best knowledge and belief of your petitioner, is by virtue of an arrest made in pursuance of an executive warrant issued by the Hon. Benjamin B. Odell, Jr., governor of the State of New York, on two requisitions from the governor of the State of Tennessee, reciting that the petitioner has been indicted in the State of Tennessee for the crime of grand larceny and false pretences, and was a fugitive from the justice of the State of Tennessee.

Your petitioner further shows that his arrest and imprisonment is illegal, and he is unlawfully restrained of his liberty in that he is restrained of his liberty in violation of the law of the United States, namely, the act of February 12, 1793, section 5278 of the Revised Statutes of the United States, in this that the executive warrant, under which he is now restrained, shows that the crimes with which he is charged were committed in the State of Tennessee; that the papers accompanying the demand of the governor
3 of Tennessee are not authenticated as required by that act; that it nowhere appears that your petitioner was personally within the limits of the State of Tennessee at the time said alleged crimes are stated to have been committed; that the governor of the State of New York had no jurisdiction to issue his warrant in that it did not appear before him, that your petitioner was a fugitive from the justice of the State of Tennessee or had fled therefrom; that it did not appear that there was any evidence before the governor of the State of Tennessee at the time he issued his demand, that your petitioner was personally or constructively within the limits of the State of Tennessee when the crimes are alleged to have been committed; that it appears on the face of the indictment accompanying the requisitions of the governor of Tennessee that no crime under the laws of Tennessee is charged or has been committed; that your petitioner has been unable to procure a copy of

the executive warrant or the papers upon which the same was issued and therefore is unable to attach the same hereto.

Wherefore, your petitioner prays that a writ of *habeas corpus* issue, directed to said James L. Hyatt, chief of police of the city of Albany, commanding him that he have the body of said Charles E. Corkran, by him imprisoned and detained, together with the cause of such imprisonment and detention before Hon. D. Cady Herrick, justice of the supreme court of the State of New York, at his chambers in the city hall, in the city of Albany, N. Y., on the — day of March, 1902, at — o'clock.

Dated the 13th day of March, 1902.

CHARLES E. CORKRAN.

4 STATE OF NEW YORK, } ss:
City and County of Albany, }

Charles E. Corkran, being duly sworn, says that he has heard read the foregoing petition and knows the contents thereof, and that he believes it to be true.

CHARLES E. CORKRAN.

Subscribed and sworn to before me, this 13th day of March, 1902.

H. M. SCHLESINGER,
Com. of Deeds, Albany, N. Y.

Writ of Habeas Corpus.

In the name of the People of the State of New York, to James L. Hyatt, chief of police of the city of Albany:

We command you that you have the body of Charles E. Corkran, by you imprisoned and detained, as it is said, together with [L. S.] the time and cause of such imprisonment and detention by whatsoever name the said Charles E. Corkran is called or charged, before Hon. D. Cady Herrick, justice of the supreme court, at his chambers in the city hall, in the city of Albany, on the 17th day of March, 1902, at 9.30 o'clock in the forenoon, to do and receive what shall then and there be considered concerning the said Charles E. Corkran, and have you then there this writ.

Witness: Hon. D. Cady Herrick, one of the justices of the supreme court of the State of New York, the 13th day of March, one thousand nine hundred and two.

JOHN FRANEY, *Clerk.*

MARK COHN,
Petitioner's Attorney.

(Endorsed:) Allowed this 13th day of March, 1902. D. Cady Herrick, justice supreme court.

5 *Return to Writ of Habeas Corpus.*

Supreme Court.

PEOPLE OF THE STATE OF NEW YORK on the Relation of CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany, N. Y., Defendant.

To the supreme court of the State of New York:

The return of James L. Hyatt, chief of police of the city of Albany, to the writ of *habeas corpus* hereto annexed.

Obedient to the command of the annexed writ, I do hereby certify the return:

That before the said writ came to me and on the 13th day of March, 1902. Charles E. Corkran, named therein, was in my custody and detained by me, as chief of police of the city of Albany, under and by virtue of a warrant issued by the governor of the State of New York for the extradition of said Charles E. Corkran, charged with the commission of the crime of larceny and false pretenses in the State of Tennessee, a copy of which warrant is hereto annexed and made part of this return:

That the said Charles E. Corkran is still in my custody and by me detained by virtue of said warrant.

All of which I certify and I have here the body of said Charles E. Corkran, as by the said writ I am commanded.

Dated March 17, 1902.

JAMES L. HYATT,
Chief of Police of the City of Albany, N. Y.

6 In the name of the People of the State of New York, to James L. Hyatt, chief of police of the city of Albany:

We command you that you have the body of Charles E. Corkran, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said Charles E. Corkran is called or charged, before Hon. D Cady Herrick, justice of the supreme court, at his chambers in the city hall, in the city of Albany, on the 17th day of March, 1902, at 9.30 o'clock in the forenoon, to do and receive what shall then and there be considered concerning the said Charles E. Corkran, and have you then there this writ.

[L. s.]

Witness: Hon. D. Cady Herrick, one of the justices of the supreme court of the State of New York, the 13th day of March, one thousand nine hundred and two.

JOHN FRANEY, *Clerk.*

MARK COHN,
Petitioner's Attorney.

Warrant of the Governor.

STATE OF NEW YORK,
Executive Chamber.

The governor of the State of New York to the chief of police, Albany, N. Y., and the sheriffs, undersheriffs, and other officers of and in the several cities and counties of this State authorized by subdivision 1 of section 827 of the Code of Criminal Procedure to execute this warrant:

It having been represented to me by the governor of the State of Tennessee that Charles E. Corkran stands charged in that
7 State with having committed therein in the county of Davidson, the crimes of larceny and false pretences, which the said governor certifies to be crimes, under the laws of the said State, and that the said Charles E. Corkran has fled threfrom and taken refuge in the State of New York; and the said governor of the State of Tennessee having, pursuant to the Constitution and laws of the United States, demanded of me that I cause the said Charles E. Corkran to be arrested and delivered to Vernon Sharpe, who is duly authorized to receive him into his custody and convey him back to the said State of Tennessee; which said demand is accompanied by copies of indictment and other documents duly certified by the said governor of the State of Tennessee to be authentic and duly authenticated and charging the said Charles E. Corkran with having committed the said crimes and fled from the said State and taken refuge in the State of New York;

You are hereby required to arrest and secure the said Charles E. Corkran wherever he may be found within this State and thereafter and after compliance with the requirements of section 827 of the Code of Criminal Procedure to deliver him into the custody of the said Ve-non Sharpe, to be taken back to the said State from which he fled, pursuant to the said requisition; and also to return this warrant and make return to the executive chamber within thirty days from the date hereof of all your proceedings had thereunder, and of the facts and circumstances relating thereto.

Given under my seal and the privy seal of the State, at the capitol in the city of Albany, this 13th day of March, in the year of our Lord, one thousand nine hundred and two.

[L. S.] B. B. ODELL, JR.

By the governor,

JAMES G. GRAHAM,
Secretary to the Governor.

8 *Traverse to Return.*

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany, N. Y.

STATE OF NEW YORK, *City and County of Albany,* } ss:

Charles E. Corkran, being duly sworn, says that he denies that he committed either the crime of larceny or false pretences, or any other crime in the State of Tennessee; he further denies that he was within the State of Tennessee at the times mentioned in the indictments upon which the requisition of the governor was issued, and upon which the warrant of the governor of the State of New York for his surrender was granted; that he has read the indictments before the governor of the State of New York, upon which his warrant of arrest was issued, and those indictments charge him with the commission of the crime of larceny and false pretences on the 20th and 30th days of April, 1901, the 8th day of May, 1901, and the 17th day of June, 1901, and 24th day of June, 1901. Deponent further says that he was not in the State of Tennessee at any time in the months of March, April, May or June, 1901, or any time for more than a year prior to the month of March, 1901. Deponent further denies that he fled from the State of Tennessee or that he is a fugitive from the justice of the State of Tennessee.

9 Deponent further says that he has heard read the papers accompanying the requisition of the governor of the State of Tennessee to the governor of the State of New York, and that said papers do not contain any evidence or proof that said Charles E. Corkran was in the State of Tennessee at any stated time since the 26th and 27th days of May, 1899, and do not contain any evidence or proof that said Charles E. Corkran was in the State of Tennessee on any day in any of the months set forth in said indictments when the said crime or crimes are alleged to have been committed.

CHARLES E. CORKRAN.

Sworn to before me, this 17th day of March, 1902.

H. M. SCHLESINGER,
Com. of Deeds, Albany, N. Y.

Stipulation of Conceded Facts.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany, N. Y.

It is conceded that the relator was not within the State of Tennessee between the first day of May, 1899, and the first day of July, 1901.

It is also conceded that the relator was in the State of Tennessee on the 2nd day of July, 1901.

Dated March 17th, 1902.

SCHERER & DOWNS,
Attorneys for Defendant.
MARK COHN,
Attorney for Petitioner.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany, N. Y.

The following additional facts are hereby conceded, and the same shall be incorporated in the appeal record herein, as a part thereof, and shall constitute a part of the record upon which the appellate division may hear and determine the appeal herein; *i. e.*

It is hereby stipulated by and between the parties to the above-entitled special proceeding that three indictments were attached to the requisition papers sent by the governor of the State of Tennessee to the governor of the State of New York for the extradition of Charles E. Corkran; that each of the said indictments was found on the 26th day of February, 1902, and that the alleged crimes were charged in said indictments to have been committed on the 1st day of May, 1901, on the 8th day of May, 1901, and on the 24th day of June, 1901, respectively.

Dated, Albany, N. Y., April 25th, 1902.

MOOT, SPRAGUE, BROWNELL & MARCY, *Attorneys for Relator.*
SCHERER & DOWNS,
Attorneys for Defendant.

10 *Testimony Taken on Hearing, March* 17, 1902.

CHARLES E. CORKRAN, being duly sworn, testifies as follows:

By Mr. MARK COHN:

Q. You are the relator in these proceedings?
A. I am.
Q. Where are you domiciled?
A. I live at the Chelsea, New York city. Have been living there for fourteen months.
Q. And where is your residence—where is your home?
A. Lutherville, Maryland.
Q. And your business?
A. My principal place was in New York city.
Q. Where were you on the 2nd day of July, 1901?
A. At Nashville, Tenn.
Q. What was your business there?

Here Mr. Downs objected, considering that Mr. Corkran's business in Tennessee was of no concern, but the court decided that he could answer.

A. I went there on behalf of the Chequasset Lumber Company, which was a heavy stockholder, owning practically all of the stock of the American Hardwood Company (about $100,000.00), to accept the resignation of S. D. Albright, president and treasurer of the American Hardwood Company, so as to protect its funds from further theft, he having embezzled a large amount.

Mr. Downs here again objected to the testimony in regard to Mr. Albright's theft, saying it was immaterial. Mr. Cohn being
11 perfectly satisfied to have that stricken out, his object being to show what Mr. Corkran's business was there. The court, however, allowed the answer to be given, and witness continued:

And to notify the Union Bank and Trust Company that Mr. Albright's resignation had been demanded, and would probably be accepted that day. It was obtained, and after it was obtained, the Union Bank & Trust Company was notified.
Q. By you?
A. By me; and minutes produced, showing that I was elected president and treasurer of the company on the 2nd day of July, 1901. I got in town about nine o'clock in the morning, and left at night about 7.30 or 7.45 at night.
Q. The Union Trust Company, is that the company that claims it was defrauded, and upon which claim these indictments were found against you?
A. Yes; the Union Bank & Trust Company.
Q. And you have never been in the State of Tennessee since that time?
A. Yes; I have never been to Nashville; have passed through there. Don't remember just when. The 16th or 17th of July

went to Chattanooga. Did not stop in Nashville at all, and was not in Nashville.

Q. What was your business there?

A. I went down there to investigate the lumber; to find out how much lumber we had in the yard at Chattanooga.

Q. That is, that the American Hardwood Company had in the yard at Chattanooga?

A. Yes; to see whether it tallied with the report which was left by Albright, as to the value of it. I think that is all.

Mr. Downs:

Q. You have not been in the State of Tennessee since the 16th of July, 1901, at the time you went to Chattanooga?

A. No, sir; I have not.

12 Q. What was your position in the Chequasset Company?

A. I was president of it.

Q. And how many shares of stock did that company own in the American Hardwood Company?

A. I don't remember just the number of shares; they owned $99,000.00 (and some odd dollars). Don't remember exactly.

Q. Out of $100,000.00?

A. Yes.

Q. And how many shares did you own in the Chequasset Company?

Mr. Cohn objected, as being immaterial. Court decided that the answer should be given.

A. I cannot tell exactly how many shares I owned in that company. It was about $65,000.00 of the capital stock.

That is all.

Judge:

Q. Have you ever lived in the State of Tennessee?

A. No, sir.

Q. Did you ever reside there for the purpose of doing business at all?

A. Never.

Mr. Downs here desired to ask one more question:

Q. Were you there in Tennessee at the time of the incorporation of the American Hardwood Company?

A. No, sir.

Q. And wasn't there since about May 26th or 27th, 1899?

A. No, sir.

That is all.

13 *Order Dismissing Writ, March* 19, 1902.

At a special term of the supreme court of the State of New York, held at the city of Albany, N. Y., on the 19th day of March, 1902.
Present: Hon. D. Cady Herrick, justice.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Plaintiff,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Defendant.

Upon the petition for a writ of *habeas corpus* herein filed, and the writ of *habeas corpus* thereon issued, and upon the return thereto filed, and upon the proceedings and testimony had before the court, and after hearing Mark Cohn, Esq., for the relator, and J. Murray Downs in opposition thereto, it is now on motion of Scherer & Downs, attorneys for the defendant,

Ordered, that the said writ of *habeas corpus* be and the same is hereby dismissed, and the said relator, Charles E. Corkran, is hereby remanded back to the custody of the defendant, James L. Hyatt, as chief of police of the city of Albany, N. Y.

D. CADY HERRICK,
Justice Supreme Court.

14 *Oral Opinion of Mr. Justice Herrick, March* 19, 1902.

In the Matter of THE PEOPLE on the Relation of CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police.

This is an application made to me for a writ of *habeas corpus* to inquire into the cause of the detention of Mr. Corkran by the chief of police, and it appears that that detention is by reason of the mandate of the governor, issued upon the requisition of the governor of Tennessee.

The question presented in this case, so far as I can discover, has never been squarely passed upon by the courts of this State, or by the Supreme Court of the United States. It is an interesting and novel question. The question is presented as to what is a fleeing from justice, within the meaning of the Constitution and statutes of the United States, requiring the governor of one State to deliver to another State a fugitive from justice. The crimes stated to have been committed by this man are alleged to have been committed on the 30th day of April, the 8th day of May, and the 17th and 24th days of June, 1901. It is conceded that Corkran was not within the State of Tennessee from the 1st day of May, 1899, to July 2nd, 1901. In other words, that he was not within the State of Tennessee at the time of the alleged commission of these crimes. The crimes charged

are of that nature that they may be committed within a State although the person charged with committing them is not physically present in that State. Then it appears, however, undisputed that he was in the State of Tennessee on the 2nd day of July, and again on the 16th or 17th of July, 1901. That is, that he was within the jurisdiction of the State of Tennessee at a time after the alleged commission of the crime. When this indictment was found does not appear,—whether
15 prior to his appearance in the State of Tennessee, or whether subsequent to it; but as I stated before, it does appear that he was upon these two occasions within the jurisdiction of the State after it is charged that he committed the crimes, and he is now found without the jurisdiction of the State. It presents a novel question. I have not had time to write an opinion upon it and express my views fully in relation to it; but it seems to me that it is a case that comes within the spirit, if not the letter, of the Constitution and of the laws of Congress in relation to the extradition of persons charged with crime. The question is so novel and important that I think that it should be passed upon deliberately by our courts, and while I dismiss the writ of *habeas corpus* and remand the petitioner to the custody of the chief of police I will also at the same time, at the request of the petitioner's counsel, grant a stay until twelve o'clock noon tomorrow, to enable him, if he sees fit, to make an application to some other justice for a stay, which I assume will be followed by an application to release him upon bail. I do this because I do not wish the business of the circuit to be interrupted by arguments. I do not feel that I have the time, in justice to litigants and jurors, to give to it, and I do not see that I am called upon at this time to undergo any more labor than is actually necessary. So that you may take the stay, and make your application to some other justice, stating to him the reasons why I do not wish to entertain it at this time myself, because I am engaged in the trial of a case, and I have all the work I can attend to, and have had for the last four months.

16 *Order Granting Stay and Fixing Bail.*

At a special term of the supreme court of the State of New York, held at chambers in the city of Albany, on the 19th day of March, 1902.

Present: Hon. Alden Chester, justice.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran
against
JAMES L. HYATT, as Chief of Police of the City of Albany.

The writ of *habeas corpus* issued herein on the 13th day of March, 1902, having been dismissed and the application to discharge the

relator denied by Mr. Justice D. Cady Herrick, on the 19th day of March, 1902, and the said justice having made an order remanding the relator to the custody of James L. Hyatt, chief of police of the city of Albany, and granting a stay of proceedings to enable the relator to apply to any justice of the supreme court of the State of New York for a stay of proceedings and to be liberated on bail pending the decision of an appeal from the order of Mr. Justice D. Cady Herrick, denying the application of the relator for his discharge, and an application having been duly made to Mr. Justice Alden Chester, justice of the supreme court of the State of New York, at his chambers in the city of Albany, New York, on the 19th day of March, 1902, for a stay of proceedings herein and to admit the relator to bail pending the appeal from the
17 said order of Mr. Justice D. Cady Herrick, now after hearing Mark Cohn, Esq., of counsel for Charles E. Corkran, the relator herein, in favor of such application, and J. Murray Downs, Esq., of counsel for James L. Hyatt, chief of police of the city of Albany, and Vernon Sharp, agent of the State of Tennessee, in opposition, and due deliberation had, it is

Ordered that a stay of all proceedings under the order of the special term of the supreme court held by Mr. Justice D. Cady Herrick, made on the 19th day of March, 1902, remanding the custody of the relator to James L. Hyatt, chief of police of the city of Albany, N. Y., and denying the application of relator to be discharged from imprisonment, be and the same hereby is granted until the decision of the appellate division of the supreme court of the State of New York, third judicial department, on the appeal taken herein to the said appellate division of the supreme court, third judicial department, from the said order of Mr. Justice D. Cady Herrick.

It is further ordered, that the said Charles E. Corkran be admitted to bail pending said appeal in the sum of seventy-five hundred dollars, in an undertaking to be approved by a justice of this court, on notice to the counsel for the said chief of police, and on the filing and approval of said undertaking, the said Charles E. Corkran be liberated and discharged from arrest; and that in the meantime, and until the giving and approval of said undertaking, the said Charles E. Corkran remainin the custody of James L. Hyatt, chief of police of the city of Albany, within the jurisdiction of this court, to wit, in the county of Albany, N. Y.

Enter.

ALDEN CHESTER,
Justice Supreme Court.

18 Personal service of the foregoing order admitted this 20th day of March, 1902.

GEORGE ADDINGTON,
District Attorney.

SCHERER & DOWNS,
Attorneys for J. L. Hyatt, as Chief, &c., and Attorneys for Vernon Sharp, as Agent and Individually.

Notice of Appeal.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany.

Take notice, that the above-named relator hereby appeals to the appellate division of the supreme court, third judicial department, from the order of the special term of the supreme court held by Mr. Justice Herrick, made on the 19th day of March, 1902, and entered in the office of the clerk of the county of Albany, on March 20th, 1902, dismissing the writ of *habeas corpus* granted herein on the 13th day of March, 1902, and refusing the application of the relator, to discharge him from imprisonment and remanding him to the custody of the said James L. Hyatt, chief of police of the city of Albany, and from each and every part thereof.

Dated, the 19th day of March, 1902.

Yours, &c.,

MARK COHN,
Attorney for the Relator.

19 Office and post-office address, 62 and 64 State street, Albany, N. Y.

To James L. Hyatt, chief of police of the city of Albany; Sherer & Downs, Esqs., attorneys for Vernon Sharp, agent for the State of Tennessee, and attorneys for James L. Hyatt, chief of police of the city of Albany; George Addington, Esq., district attorney of Albany county; John Franey, Esq., clerk of the county of Albany.

Affidavit—No Opinion Filed.

Supreme Court.

THE PEOPLE *ex Rel.* CHARLES E. CORKRAN
against
JAMES L. HYATT, as Chief of Police of the City of Albany.

STATE OF NEW YORK, *City and County of Albany,* } *ss.:*

Mark Cohn, being duly sworn, says that he is one of the attorneys for the relator and appellant herein; that the justice before whom the hearing herein took place did not render or file an opinion concerning the order of March 19, 1902, save the oral opinion hereinbefore set forth.

MARK COHN.

20 Sworn to before me, this 5th day of April, 1902.

H. M. SCHLESINGER,
Com. of Deeds, Albany, N. Y.

At a term of the appellate division of the supreme court, third department, held at its court-room in the city of Albany, N. Y., on the 23d day of May, 1902.

Present: Hon. Charles E. Parker, presiding justice; Hon. Walter Lloyd Smith, Hon. S. Alonzo Kellogg, Hon. Emory A. Chase, Hon. Edgar L. Fursman, associate justices.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Plaintiff, Appellant,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Defendant, Respondent.

The appeal from the order made at a special term of the supreme court of the State of New York, held at chambers in the city of Albany, N. Y., on the 19th day of March, 1902, dismissing a writ of *habeas corpus* issued on the petition of Charles E. Corkran and denying the application of the said Charles E. Corkran to be discharged from custody, coming on to be heard at this court, and on
21 reading and filing the papers on appeal herein, and after hearing Adelbert Moot, Esq., for the relator, and J. Murray Downs, Esq., for the defendant, it is now, on motion of Scherer & Downs, attorneys for the defendant-respondent,

Ordered that the said order appealed from be and the same hereby is unanimously affirmed in all things.

JOSEPH H. HOLLANDS, *Clerk.*

[SEAL.]

A copy.
JOSEPH H. HOLLANDS, *Clerk.*

Appellate Division, Supreme Court.

PEOPLE on the Relation of CHARLES E. CORKRAN
against
JAMES L. HYATT, as Chief of Police of the City of Albany.

The appeal in the above-entitled proceeding having been heard at the appellate division, and the order dismissing the writ and denying the application of the relator to be discharged having been affirmed, and the relator intending to appeal to the court of appeals, and, after hearing Frank L. Sage for the relator and J. Murray Downs for the defendant in opposition, it is now, on motion of Messrs. Moot, Sprague, Brownell and Marcy, attorneys for the relator,

Ordered that all proceedings on the warrant of the governor be and the same are hereby stayed, until the hearing and de-
22 termination of this matter by the said court of appeals.

And it is further ordered that the said Charles E. Corkran be admitted to bail pending said appeal on condition of his filing a bond to the People of the State of New York in the penal sum of seventy-five hundred dollars ($7,500), such bond to be approved by

a justice of this court; said bond to be filed within a week from the date of this order.

Dated May 24, 1902.

EMORY A. CHASE,
Justice Supreme Court.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany.

Take notice that the above-named relator hereby appeals to the court of appeals from the order of the appellate division of the supreme court, third judicial department, entered in the office of the clerk of Albany county on the 26th day of May, 1902, affirming the order of the special term of the supreme court, made on the 19th day of March, 1902, and entered in the office of the clerk of Albany county on the 20th day of March, 1902, dismissing the writ of *habeas corpus* granted herein on the 13th day of March, 1902, and
23 refusing the application of the relator to discharge him from imprisonment, and remanding him to the custody of the said James L. Hyatt, chief of police of the city of Albany, and from each and every part thereof.

Dated the 24th day of May, 1902.

Yours, etc.,
MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Relator.

Office and post-office address, 45 Erie Co. Savings Bank bldg., Buffalo, N. Y.

To James L. Hyatt, chief of police of the city of Albany; Scherer & Downs, Esqs., attorneys for Vernon Sharp, attorneys for the State of Tennessee, and attorney- for James L. Hyatt, chief of police of the city of Albany; George Addington, Esq., district attorney of Albany county; John Franey, clerk of the county of Albany.

Appellate Division, Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Plaintiff, Appellant,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Defendant, Respondent.

STATE OF NEW YORK, }
City and County of Albany, } *ss:*

Frank L. Sage, being duly sworn, deposes and says that he
24 is a clerk of the law firm of Moot, Sprague, Brownell & Marcy, attorneys for the relator above named, and that no

opinion was filed by the appellate division in the above-entitled matter.

FRANK L. SAGE.

Sworn to before me this 24th day of May, 1902.

ANNA E. BURKE,
Com. of Deeds, Albany, N. Y.

In the Court of Appeals.

THE PEOPLE *ex Rel.* CHARLES E. CORKRAN, Appellant,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, Respondent.

It is hereby stipulated by and between the parties to the above-entitled action, by their respective attorneys, pursuant to section 3301 of the Code of Civil Procedure, that the foregoing printed papers are true, correct and complete transcripts and copies of the originals thereof filed in the office of the clerk of the county of Albany, and of all the papers and testimony used before the court on the hearing and determination of the writ of *habeas corpus* herein, and of each and every part thereof, and of the oral opinion of the court, and are hereby deemed for all purposes certified, and may be used and filed with the same force and effect as if certified
25 by the court. The certificate of the county clerk required by section 1353 of the Code of Civil Procedure is hereby waived.

Dated the 31st day of May, 1902.

SHERER & DOWNS,
Attorneys for James L. Hyatt, as Chief of Police of the City of Albany, and Vernon Sharp, Agent for the State of Tennessee.

GEORGE ADDINGTON,
District Attorney of Albany County.

MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Charles E. Corkran.

26 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 7th day of October, in the year of our Lord one thousand nine hundred and two, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, October 8th, 1902.

27 THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran, Appellant,
ag'st
JAMES L. HYATT, Chief of Police of the City of Albany, Respondent.

Be it remembered, that on the 5th day of June, in the year of our Lord one thousand nine hundred and two, Charles E. Corkran, relator, the appellant in this proceeding, came here into the court of appeals, by Moot, Sprague, Brownell and Marcy, his attorneys, and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the third judicial department. And James L. Hyatt, chief of police, &c., the respondent in said proceeding, afterwards appeared in said court of appeals by Scherer and Downs, his attorneys.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

28 Whereupon, the said court of appeals having heard this proceeding argued by Mr. Adelbert Moot, of counsel for the appellant, and by Mr. J. Murray Downs, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is reversed, and relator discharged.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

29 Therefore, it is considered that the said order be, and the same hereby is, reversed &c., &c., as aforesaid.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *October 8th*, 1902.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein attached thereto.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND, *Clerk.*

30 THE PEOPLE *ex Rel.* CHARLES E. CORKRAN, Appellant,
v.
JAMES L. HYATT, as Chief of Police of the City of Albany, Respondent.

(Decided October 7, 1902.)

Appeal from a judgment of the appellate division of the third department affirming a final order dismissing a writ of *habeas corpus* and remanding the relator to custody.

Adelbert Moot for appellant.
J. Murray Downs and *Robert G. Scherer* for respondent.

CULLEN, *J.:*

The relator was arrested and held under a mandate or warrant of the governor of this State issued on the requisition of the governor of the State of Tennessee for the delivery of the relator as a fugitive from justice. The mandate of the governor recites that it has been represented to him that the relator stands charged in the State of Tennessee with having committed the crime of larceny and false pretenses in the county of Davidson, and that he had fled from said State and taken refuge in the State of New York. By stipulation between the parties it was conceded that the indictments attached to the requisition papers under which the governor issued his warrant were found on the 26th day of February, 1902, and that the alleged crimes charged in the indictments were committed on May 1st, 1901, May 8th, 1901, and June 24th, 1901, respectively. At the hearing had on the return of the writ of *habeas corpus* it was further stipulated between the parties that the relator was not in the State of Tennessee at the time of the commission of any of the offenses charged against him, but in the State of Maryland, which was his residence. It appeared by his testimony that he went to Nashville in Tennessee on the second day of July, 1901, to accept the resignation of one Albright, the president and treasurer of the American Hardwood Company, in which the relator was interested, and was then elected president of the company in said Albright's stead; that that evening he left Nashville and never was again in the State of Tennessee except passing through there on the 16th or 17th of July. It is not claimed that the offenses for which the extradition of the relator was sought were committed when he was in the State of Tennessee, but it is contended that though not corporeally present at the time of the commission of the offense he may nevertheless be properly surrendered as a fugitive from the justice of that State where it was committed.

It is to be premised that the power of a government to punish for extraterritorial crimes is a very different question from that of its right to require the surrender to it from foreign countries for trial and punishment persons alleged to have committed such offenses. Some governments assume to impose the obligations of their penal

laws either in whole or part on their citizens, no matter
31 where they may be. We have a notable example of this rule in the recent punishment of an English peer for an alleged bigamy committed in the United States. Some governments assume to go even further and punish an alien for an offense committed against their citizens, even though the offense is committed in a foreign jurisdiction. Publicists and writers on international law differ greatly as to the right of a government to punish for offenses committed without its territory. A full review of this subject is to be found in the work of Mr. John Bassett Moore, late Assistant Secretary of State of the United States, on "Extraterritorial Crime." The power of any government to punish for such an offense necessarily depends upon its ability to obtain possession of the defendant; and though each government assumes to define its own powers, still it may be restrained by the action of the government of which the offender is a citizen, invoked on his behalf, as was the case in the controversy between this country and Mexico in relation to which the report of Mr. Moore was written. Not so with extradition between the States of the Union; it is not governed by international law, but depends solely on the provisions of the Constitution of the United States and the act of Congress made from it. The power of a State to punish a fugitive from justice after obtaining custody of his person depends in no way on how that custody was obtained. Even if the offender has been kidnapped in another State and brought within the territory of the prosecuting State, that fact does not affect the jurisdiction of the latter to punish him for the offense. (*Kerr v. Illinois*, 119 U. S. 436; *Cook v. Hart*, 146 U. S. 183.) Nor will a person be relieved from prosecution at the intervention of the State from which he was abducted by violence. (*Mahon v. Justice*, 127 U. S. 700.) In *Lascelles v. Georgia* (148 U. S. 537) it was said: "If the fugitive be regarded as not lawfully within the limits of the State in respect to any other crime than the one on which his surrender was effected, still that fact does not defeat the jurisdiction of its courts to try him for other offenses any more than if he had been brought within such jurisdiction forcibly and without any legal process whatever." It was there held that interstate rendition did not depend on comity or contract, but on the provisions of the Constitution of the United States. It will thus be seen that the condition of a citizen of one State surrendered to another for criminal prosecution has not the safeguards which exist in international extradition, for the surrendering State is without any standing to intervene in his behalf however much its process may have been abused. Therefore, it necessarily follows that no person can or should be extradited from one State to another unless the case falls within the constitutional provision, and that the power which independent nations have to surrender criminals to other nations as a matter of favor or comity is not possessed by the States.

The provision of the Constitution of the United States, (art. 4,
32 sec. 2, subdiv. 2) is: "A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority

of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." Under this Congress has enacted (sec. 5278): "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit * * * charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested * * * and to cause the fugitive to be delivered * * *." It will be seen that to authorize or require a State to surrender to another State an alleged offender it is necessary not only that such person shall stand charged with crime, but that he shall flee from justice. What constitutes a fugitive from justice has been the subject of much discussion by eminent text writers and of many decisions by the courts and by the governors of the several States. There seems to be substantial unanimity in all the authorities on one proposition, that to be a fugitive from justice a person must have been corporeally present in the demanding State at the time of the commission of the alleged crime. "The case, and the only case, for which the Constitution provides, is that of a person who is charged with crime in one State and who flees to and is found in another State. This is the whole of the case." (Spear on Extradition, 311.) "The question of constructive presence at the commission of a crime has frequently arisen in the case of obtaining money or goods by false pretenses, and it has been held that such presence in the demanding State is not sufficient as a basis for a requisition for the surrender of a person as a fugitive from justice, although, if the person charged were to come within the jurisdiction of that State, he might be arrested and punished for the false pretenses there committed while he was corporeally elsewhere." (Moore on Extradition, sec. 584.) In *Matter of Reggel* (114 U. S. 642) it was said by Mr. Justice Harlan: "Undoubtedly, the act of Congress did not impose upon the executive authority of the Territory the duty of surrendering the appellant, unless it was made to appear, in some proper way, that he was a fugitive from justice. In other words, the appellant was entitled, under the act of Congress, to insist upon proof *that he was within the demanding State at the time he is alleged to have committed the crime charged*, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process." In *Roberts v. Reilly* (116 U.S. 80) it is said by Mr. Justice Matthews: "To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the
33 party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having *within a State* committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction

and is found within the territory of another." In *Matter of Voorhees* (3 Vroom, 141) a fugitive is designated as one "who commits a crime within a State and withdraws himself from such jurisdiction." In *Wilcox v. Nolze* (34 Ohio State, 520) it is said, referring to the constitutional provision: "These words, taken as they must be in their natural and obvious sense, do not include a case of constructive presence in the demanding State and constructive flight therefrom, but relate only to a case where the accused is actually present in the demanding State at the time he commits the act of which complaint is made." The same principle has been held in *Hartman v. Aveline* (63 Ind. 344); *Jones v. Leonard* (50 Iowa, 106); *Matter of Mohr* (73 Ala. 503); *In re Jackson* (2 Flippin, 183); *Ex parte Smith* (3 McLean, 121). It is stated in a note found in Mr. Moore's work on Extradition (p. 948) that "the Interstate Extradition Conference held in New York city in August, 1887, refused to adopt a recommendation to the governors of the various States and Territories that no demand be complied with where the fleeing was constructive, on the ground that the decisions of the courts already covered the case."

Hibler v. State (43 Texas, 197) is not in conflict with these authorities, for there a fugitive from justice was defined to be "A person who commits a crime in one State for which he is indicted, and departs therefrom and is found in another State." The only case cited as authority for a contrary doctrine is *In re Cook* (49 Fed. Rep. 823), reported in the Supreme Court as *Cook v. Hart* (146 U. S. 183). In the opinion there delivered by the district judge it is said: "One may commit an offense against a State upon whose soil he has never set foot." I have already said this may be true, but it has nothing to do with the question whether the offender is a fugitive from justice. In that case the petitioner was under arrest in Wisconsin, having been extradited by the governor of the State of Illinois. He sought relief from imprisonment by writ of *habeas corpus* from the United States circuit court for Wisconsin. The question of the propriety of his extradition was, therefore, not properly before the court, and the decision of the circuit court remanding the relator was affirmed by the Supreme Court on the express ground that it was immaterial how the relator's presence in Wisconsin had been secured; that it was sufficient that at the time of the writ he was subject to its territorial jurisdiction. Nor did the case in fact require from the learned judge the statement cited. The relator was charged with having as a banker fraudulently received deposits. He had been in the State of Wisconsin a few days before, and know-
34 ing the bank to be insolvent, gave his clerks directions to receive deposits. His subsequent departure from the State, under all the authorities, made him a fugitive from justice.

The question discussed has never been passed upon by the courts in this State, but has been considered by several of our governors. In *Matter of Mitchell* (4 N. Y. Crim. Rep. 596) will be found an opinion by Governor Hill on an application for the extradition of Thomas Mitchell. Mitchell was charged with having committed manslaughter in Jersey City by reason of his ownership of an unsafe building in that place which fell and killed four persons. It ap-

peared that Mitchell had not been in New Jersey for some weeks prior to the accident. The governor refused to extradite him, holding that "The actual presence of the accused party in the demanding State, at the time of the commission of the alleged offense, is a jurisdictional fact." This view has been accepted by the governors of Massachusetts, of Maryland, of Tennessee and of Illinois. (See Moore on Extradition, sec. 579 *et seq.*) It is claimed that this court has held a contrary doctrine in *Adams v. People* (1 N. Y. 173). The defendant Adams was indicted and convicted for obtaining money under false pretenses under a fraudulent warehouse receipt which he transmitted from Chillicothe, in Ohio, to the prosecutors, merchants in New York city. The case in no respect involved the question of the constitutional obligation of the governor of Ohio to surrender the defendant to the authorities of the State of New York, but only of the power of this State to punish him after having secured jurisdiction of his person. Under the authorities already cited from the Supreme Court of the United States it was of no importance how the jurisdiction of his person was obtained.

If the relator was not otherwise subject to extradition to the State of Tennessee, because he was not personally present in that State at the commission of the alleged offenses, his subsequent presence in the State for a single day, nearly a year before the institution of any prosecution against him, could give that State no right to require his surrender. The question is whether he is a fugitive from justice, not whether the courts of the State of Tennessee *have* jurisdiction of his alleged offenses. That jurisdiction they had at all times, if at all, provided they could secure his person. I am at a loss to imagine how a man's voluntary visit to a State can constitute him a fugitive from the State when he was not such before. I should consider it as having exactly the contrary effect. If there be any force in this occurrence it must be not in his going into the State but in his failing to remain there. It is not, however, suggested that he in any respect offended against the laws of Tennessee while present there. He went there for a specific purpose, and his business accomplished, immediately left. It is not pretended that his stay was curtailed or he left the State on account of any suspicion of a prosecution. Would he have been liable to extradition because on a journey to New Orleans his route passed through the State
35 of Tennessee? Such a result seems to me utterly unreasonable. No distinction can be drawn between the two cases. In the case of *Adams*, already referred to, the prisoner sought discharge from arrest by *habeas corpus*, and the opinion of Judge Vanderpoel of the superior court of the city of New York denying the application is found in 7 Law Rep. (p. 386). Adams came voluntarily in the State, and after making an engagement to meet one of the prosecutors, suddenly left the State and failed to keep his engagement. The decision proceeded on the ground that the evidence justified the inference that the prisoner prematurely departed from the State with the view of avoiding arrest and prosecution for his crime. The case has not escaped criticism, though possibly its doctrine may be correct when limited to the facts of the case; that

is to say, a departure from the State to avoid prosecution, of which there is no suggestion in the case before us. In truth, however, the questions discussed by the court were not properly before it at all. They could have been raised in the State of Ohio, but not in New York.

It is urged that this doctrine of the necessity of corporeal presence in the State where the offense is alleged to have been committed would render the several States asylums for criminals, the effect of whose offenses was injury to property or persons in other States. There is no practical danger of the kind. It may be safely stated that nearly every State, as well as our own, punishes crimes committed within the State, although the results of the crimes are effected without its territory. Of course, the relator would be properly surrendered to the State of Maryland, where he was at the time of his alleged offense, if that State made demand for him. On the other hand, there is great danger that citizens may be carried into other States to be punished for acts which are not criminal in the jurisdiction in which they were committed. The case of false pretenses is a notable example. By our Penal Code (sec. 544) it is provided that "A purchase of property by means of a false pretense is not criminal, where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing and signed by the party to be charged." This was doubtless dictated by the knowledge that criminal charges of false pretenses are often instituted in reality to compel the payment of debt, and are easily fabricated. It may be that this provision of the code has no extraterritorial effect, and that a citizen of this State if found in another State may be punished there for alleged oral pretenses made here. But neither the Constitution nor the Federal statute requires this State to surrender him for prosecution in another jurisdiction. These considerations equally apply to prosecutions for libels alleged to have been committed in newspapers published here and circulated throughout the country. The real evil of the day is not the insufficiency of the criminal laws, but the excessive multiplication of statutory crimes, though we are not in condition to reproach our sister States for this fault when it is remembered that but
36 recently a person might, in this State, be imprisoned for the term of one year for feeding a sparrow (chap. 641, Laws 1887) and that even now notices are found in all public conveyances that a person who spits on the floor is subject to imprisonment for the same period.

It is suggested (though not by counsel) that I have construed the stipulation of the counsel for the State of Tennessee too broadly and that it was intended to admit only that the defendant was not in Tennessee at the particular dates alleged in the indictment, not that he was absent from Tennessee at the commission of the offenses charged against him. The brief of the learned counsel entirely disposes of this suggestion. He makes but two points: 1. "A person charged with crime may be extradited although he was not within the demanding State at the time of the commission of the alleged offense;" 2. "The supreme court is limited on *habeas corpus* to review but one

question, namely, the question of identity." I have, therefore, but followed the counsel's own construction of his admission.

We now reach the question whether the action of the governor can be reviewed on *habeas corpus*. It has been held by the Supreme Court of the United States in *Robb v. Connolly* (111 U. S., 624) that the governor of a State in the execution of the duty of surrendering fugitives imposed by the Constitution and the statute of Congress does not act as a United States officer and that a writ of *habeas corpus* may be issued by the State courts to test the validity of an arrest under his warrant. In *Roberts v. Reilly* (*supra*) it was said: "How far his (the governor's) decision may be reviewed judicially in proceedings in *habeas corpus*, or whether it is not conclusive, are questions not settled by harmonious judicial decisions, nor by any authoritative judgment of this court." In *Cook v. Hart* (*supra*) it was held: "We have no doubt that the governor upon whom the demand is made must determine for himself, in the first instance at least, whether the party charged is in fact a fugitive from justice, *but whether his decision thereon be final is a question proper to be determined by the courts of that State.*" The constitution and laws of the State of New York, therefore, control the decision of the question we are now considering. While doubtless to a certain extent the action of the governor is executive or ministerial, it is not so in the broad sense in which the general functions of the office are conferred upon him by our constitution. In *Matter of Guden* (171 N. Y., 529) we have held that the power given to the governor to remove a sheriff upon charges and after a hearing was executive and the exercise of that power not subject to review by the courts. But the question here is of an entirely different character. It involves the liberty of the citizen. Speaking of the division of powers among the three great branches of the Government, Parker, Ch. J., in the *Guden* case said: "There resides in the people of this and every State an absolute power to prescribe rules of action, through legislation, to enforce rules of action and to transact generally
37 the affairs of government, through executive acts, and to determine controversies between, enforce rights belonging to, and redress wrongs done to, citizens of the State, through the courts." The liability of the citizen to arrest and detention, and the grounds therefor, therefore, necessarily present a judicial question, though the arrest and detention are effected by an executive or ministerial officer. The act of Congress provides that a copy of the indictment or the affidavit before a magistrate shall be proof of the charge of crime against any person whose extradition is sought, but it does not prescribe what shall be evidence that he is a fugitive from justice. The fact that he is a fugitive is, therefore, a matter of proof. While the warrant of the governor is presumptive evidence of the fact, there is no reason on principle why it should be conclusive. It was said by Judge Jenkins in *Matter of Cook* (*supra*), referring to the case of *Roberts v. Reilly:* "That decision by its very terms implies that the action of the governor is only presumptively regular, and can be reviewed by the courts. Surely it cannot be claimed that such action is conclusive upon personal right, and may not be

inquired of by judicial tribunals. Surely it cannot be that the right to personal liberty hangs upon so slender a thread as the arbitrary will of the authorities of the demanding and surrendering States. 'No person shall be deprived of life, liberty or property without due process of law.' That is the fundamental law of the land, coming to us from Magna Charta. It is not due process of law which condemns without hearing, which convicts without trial. * * * It is essential to compliance with such executive demand that the person whose surrender is demanded should be adjudged a fugitive from the justice of the demanding State. The decision of the executive is not conclusive of that fact." The writ of *habeas corpus* is in this State available to every person imprisoned or deprived of his liberty, unless he is restrained under the authority of the Federal Government, or unless he is committed by virtue of a final judgment or decree of a competent tribunal of jurisdiction, or the final order of such a tribunal punishing him for contempt. The warrant of the governor is not a final judgment nor a decree, and even were it such it would be the duty of the court to see whether the jurisdictional facts exist which are necessary to authorize the action of the governor. The provision of section 827 of the Code of Criminal Procedure, directing that any person arrested on the governor's mandate shall be brought before a judge of a court of record and informed of his right to a writ of *habeas corpus* to inquire into his identity with the person named in the warrant does not assume to limit the inquiry on a writ of *habeas corpus* to the question of identity. It was enacted for the benefit of any person arrested under such a warrant and solely as an additional safeguard against illegal removal from the State. As was held in *People ex rel. Tweed v. Liscomb* (60 N. Y., 560), "This writ cannot be abrogated, or its efficiency curtailed, by legislative action. * * * The
38 remedy against illegal imprisonment by this writ, as it was known and used at common law, is placed beyond the pale of legislative discretion, except that it may be suspended when public safety requires, in either of the two emergencies named in the Constitution." If, therefore, on the return to the writ it was clearly shown that the relator was not a fugitive from justice and there was no evidence from which a contrary view could be entertained, which is the fact in this case, as appears by the stipulation and concession of the parties, there is no reason why greater efficacy should be given to the warrant of extradition than to the warrant of any other magistrate by which a citizen is imprisoned or deprived of his liberty. In *People ex rel. Lawrence v. Brady* (56 N. Y. 182) this court discharged the relator, who was held under a warrant of extradition issued by the governor of the State on the ground that the affidavit on which the surrender was asked did not state a crime. In *People ex rel. Draper v. Pinkerton* (77 N. Y. 245) the only question decided was whether the warrant of the governor recited the facts necessary to confer authority under the Constitution and laws of the United States and was sufficient justification for holding the prisoner to be brought up on *habeas corpus* without producing the papers or evidence upon which the governor acted. It was held that the recitals were to be

taken as *prima facie* true, no proof to the contrary having been introduced by the prisoner. In *People ex rel. Jourdan v. Donohue* (84 N. Y. 438) again the only question was the sufficiency of the executive warrant on its face. Referring to criticisms that had been made on the decision in the *Lawrence* case the court said: "And hence we have held that where the preliminary papers upon which a warrant of extradition has been granted are produced, and are before us, it is our right and our duty to examine them, and judge and determine, when our process is invoked, whether they are sufficient, under the law, to justify the warrant of extradition. Our ruling in this respect has not escaped criticism; but an opposite conclusion, which would make the determination of the executive final, even though the papers produced clearly showed that the essential preliminaries of the law were unfulfilled, does not yet commend itself to our judgment." In all these cases the question related to the sufficiency of the charge of the prisoner, not to his being a fugitive. But if the courts can review the action of the governor on one prerequisite for extradition, it is difficult to see why they cannot equally review his action on the other. The great weight of authority in other States is in favor of such a review. It was so held in the cases of *Jones v. Leonard* (*supra*), *Wilcox v. Nolze* (*supra*), *Hartman v. Aveline* (*supra*) and *Matter of Mohr* (*supra*). In the *Wilcox* case it is said: "Whether or not the accused committed the acts complained of while actually present in the demanding State is jurisdictional, and it is clearly competent, in such case, to show by parol evidence a defect in the executive power, however regular the extradition papers may be in matter of form." In the *Jones* case it is said:
39 "The governor of this State is not clothed with judicial powers, and there is no provision of the Constitution or laws of the United States or of this State which provides that his determination is final and conclusive in the case of the extradition of the cit-zen. In the absence of such a provision we hold that the decision of the governor only makes a *prima facie* case; that it is competent for the courts in a proceeding of this character to inquire into the correctness of his decision, and discharge the prisoner." In the *Mohr* case the learned court said: "We are of opinion that the probate judge did not err in discharging the petitioner, and that it was competent for him to hear oral evidence in order to establish the fact that the petitioner was not a fugitive from justice. Any other conclusion than this would establish a doctrine very dangerous to the liberty of the citizen. It would greatly impair the efficacy of the proceeding of *habeas corpus*, which has been often characterized as the great writ of liberty, and may be regarded, not less than the right of trial by jury, as one of the chief corner-stones in the structure of our judiciary system. It might justly be considered as alarming to announce that a writ which has so frequently been used for centuries past to prevent the encroachment of kings upon popular liberty is inadequate for the just purposes for which it has been invoked in this case."

There is little to be added to what has been so well said by the jurists of other States. The further suggestion, however, may be

made, that no law gives a person sought to be extradited the right to a hearing before the governor or to submit evidence in his behalf. Whatever in these respects may be accorded by the governor to the accused is a matter of favor, not of right. Therefore, unless he may review his extradition on *habeas corpus*, a citizen, on the fiat of an executive officer, without a hearing, may be transported a prisoner to the utmost confines of the country. It has been held by the Supreme Court of the United States that in the case of foreign extradition there must be some competent evidence before the magistrate to authorize the surrender of the accused. (*Ornelas v. Ruiz*, 161 U.S. 502.) But if the orders made below are upheld, in the case of interstate extradition, a citizen may be surrendered without the slightest evidence either of his guilt or that he is a fugitive.

Of course, the guilt or innocence of an alleged fugitive from justice is not to be determined on requisition proceedings, nor on the writ of *habeas corpus*. Therefore, if the charge was such as to necessarily require the presence of the accused within the State at the time of the commission of the offense, mere proof of an alibi would not in every case require or justify his discharge. But the question in the present case is not one of alibi, for the stipulation of the parties admits that the defendant was not personally present in the State of Tennessee at the commission of the alleged offenses.

For these reasons the order of the special term and the appellate division should be reversed and the relator discharged from custody.

40 O'BRIEN, *J.*:

I agree with Judge Cullen in his exposition of the principles applicable to this case. It may possibly be useful to add to this very clear and able exposition of the law some suggestions with a view of eliminating from the case certain considerations that are misleading and wholly foreign to the questions involved and a word with respect to the functions of the writ of *habeas corpus* and the procedure thereon in cases of interstate extradition. It is declared by statute to be a State writ to inquire into the cause of detention and in a proper case to discharge the person from all restraint of his liberty. In some cases the writ cannot issue at all, namely in cases where the restraint or detention is by virtue of a mandate from a court or judge of the United States in cases where such court or judge has exclusive jurisdiction. Neither can it issue in a case where the party is detained by virtue of the final judgment or decree of any competent tribunal civil or criminal. (Code, sec. 2016.)

The applicant for the writ must show affirmatively in his petition that he is not detained under any such process, and should it appear upon the hearing that he is, then he must be remanded. (Code, secs. 2032–'33.) In other words, when certain facts are made to appear as the cause of the detention the inquiry can go no farther, but must stop and the applicant must be remanded, however unjust in point of fact his detention may be. In all other cases there are no limitations upon the scope of the inquiry, but it must proceed until the issue is determined according to the rules of law applicable to such

a case. The burden in the first instance is upon the officer or party who detains the person to show that such detention is authorized by some legal authority.

The relator in this case was not detained under process from any court, civil or criminal, but under an executive warrant commanding the defendant to deliver him to an agent of another State, to be brought to that State for trial upon a charge of crime alleged to have been commited in that State, and hence all the facts were open to inquiry. The defendant made return to the writ that he detained the relator under this warrant, but exhibited no other document or paper to sustain the warrant. The warrant on its face stated that it had been represented to the governor of this State by the governor of the State of Tennessee that the relator was charged in that State with the crime of larceny and false pretenses and that he had fled from that State and taken refuge in this State. These statements on the face of the warrant were to be taken as presumptively true in the first instance, and, if the inquiry rested there, the defendant had made out a *prima facie* case to justify the detention. It is important here to note and to keep always in view that when the defendant presented the executive warrant without any other document or paper or any other proof of the facts therein stated he raised only a presumption. The warrant did not conclusively establish the facts recited. It was so held by this court (*People ex rel. Lawrence v. Brady*, 56 N. Y. 182), and the law as laid down
41 in that case has never been modified but has been repeatedly approved. Indeed, I do not understand that there is now any difference of opinion as to the legal effect of the warrant as evidence. It raised a presumption but nothing more. I am not aware of any case in any court of controlling authority where it was held to be conclusive and no reason is given why it should be.

But a mere legal presumption is good and justifies an act only until it is removed by proof of some other fact, and when so removed the act stands without authority or justification. That, in my opinion, is just what happened in this case as will appear hereafter. It must be borne in mind all the time that we know nothing and can know nothing judicially concerning the facts or circumstances of the larceny and false pretenses charged in the warrant. The record does not even contain the indictment or any paper or proof as to the facts, if any, that transpired in the demanding State. All we know or can know are the things recited in the warrant. The statute provides (Code, sec. 2039) that the relator may, under oath, deny any material allegation of the return or state any fact to show that his detention was illegal or that entitled him to his discharge. The relator did so traverse the return and thus put the facts stated in the warrant in issue. The court thereupon was required to proceed in a "summary way to hear the evidence" and dispose of the case as justice required. The relator proved one material fact conclusively and that was that he was not within the demanding State at the time of the commission of the crime as that fact was averred in the indictment. I do not mean that his oath on that point was conclusive, but the proof was of a higher charac-

ter, namely, the stipulation of the respective attorneys in open court. These were admissions upon the record that import absolute verity for all the purposes of the inquiry and they had the legal effect to remove every presumption to the contrary that arose from the face of the warrant. (1 Greenleaf's Ev. sec. 186.) It is important to understand the real scope and effect of these admissions. They were (1) That three indictments were attached to the requisition papers upon which the warrant was issued and as they were not produced we know nothing as to their contents except as stated in the admission and that statement was: (2) That all of them were found on February 26, 1902, and the alleged crimes were charged in the indictments to have been committed on May 1, 1901, May 8, 1901, and June 24, 1901, respectively. So that we simply know that the relator was charged with three distinct offenses of larceny and false pretenses committed on the dates above stated. (3) It was also admitted and stipulated that the relator was not within the State of Tennessee between May 1, 1899, and July 1, 1901, but was in that State on July 2, 1901.

These are all the facts that the demanding State elected to disclose upon the hearing of the writ of *habeas corpus* as the grounds for taking the relator from this State against his will into
42 another jurisdiction. Not a single fact is before us that raises any question as to the constructive presence of the relator in the demanding State on the dates named in the indictment or that would warrant even the suspicion that he committed the crimes charged by means of an innocent agent. All that is said upon that subject is pure conjecture without any fact upon which to build up the speculation. On the record before us the relator was presumptively personally present in the demanding State at the dates named and there took and carried away the property claimed to have been stolen or he did not and could not commit the offense charged in that State at all. It having been conclusively established that the relator was not in the demanding State on the dates when the crimes are charged to have been committed, it follows that he could not have committed the offenses and certainly could not have *fled* from the justice of the demanding State. The authorities are unanimous in holding that a person cannot be a fugitive from the justice of the demanding State who was not in that State when the crime charged is alleged to have been committed. Constructive presence furnishes no basis for executive action. The cases on that subject are collected in a note to the case of *State of North Carolina v. Hall* (28 L. R. An. 289). The presumption arising from the recitals in the executive warrant was completely overthrown by the admissions upon the hearing before the court that the relator was not in the demanding State at the dates when it was alleged that the crimes were committed, and this left the warrant, under which the relator was in custody, without any basis upon which to rest.

This proposition is met only in one way and by one line of argument which should now be noticed. It is suggested that since the relator was in the demanding State on the 2d day of July, 1901, for a few hours on a temporary errand of business, that he may have

committed some or all of the crimes charged while there on that day, and that since the precise dates stated in the indictment are not material, it may be shown upon the trial that he actually did commit the crimes on that day and hence this court should send the relator to the demanding State for trial. This suggestion may possibly have the merit of ingenuity, but as a method of reasoning or argument, or as a judicial utterance in a case involving personal liberty, it is to be hoped that this court will not adopt it. The State of Tennessee and its agent were represented at the hearing upon the writ by able counsel. All the facts and circumstances constituting the alleged crimes were open to inquiry. It could have been shown that there was or might have been a mistake in stating the dates in the indictment, or it could have been shown that the crimes were actually committed on the 2d day of July following, but nothing of the kind was claimed or even suggested. The demanding State, its agent and counsel, for some reason, elected to withhold all proof of the facts and circumstances of the alleged larcenies and to stand upon the bare recitals in the warrant.

43 The *prima facie* proof that the State gave, consisting only of the recitals of the warrant, that the relator was personally present there at the dates named and committed the crimes, was superseded and removed by the solemn and conclusive admissions in open court that he was not there at the time, and consequently could not have fled from justice. When the prosecution alleges and proves a larceny committed at a designated time and place, and makes no claim that it was committed at any other time or place, and the accused then shows by conclusive proof that he was not in the State on the days designated, nor for a year before, nor for eight days after, and the case rests upon these facts alone, without any proof to justify even a suspicion that the crime was committed eight days after the date laid in the indictment, it would be a strange rule of law that would permit the case to go to the jury in order to procure a finding that, after all, the time laid in the indictment was a mistake and the crime was committed by the accused at the later date.

But the case of *Roberts v. Reilly* (116 U. S. 80) is cited to sustain this line of argument, and an expression of the learned judge who spoke for the court is made prominent. This court and every other court has often commented upon the value of isolated judicial expressions in an opinion as authority. The facts of the case upon which the decision was based must be compared with the one in hand in order to enable us to interpret the decision and the language of the opinion. The difference in the facts of that case and the one at bar is so radical and fundamental that it will be seen at a glance that it has no application.

(1.) In that case the State of New York, the demanding State, took a very different course from that adopted by the demanding State in the case at bar. It did not rest its right upon the recitals of the warrant, but produced all the papers upon which it issued, thus disclosing to the court all the facts and circumstances constituting the crime charged. The warrant was there supported by all the pre-

ceding facts and the recitals became wholly immaterial; not so here, since the recitals give us all the light we have, and they are conclusively contradicted by the admissions of record.

(2.) Not only did the court have all the papers before it, but proof was given *dehors* the record as to all the facts and circumstances of the crime. There was full disclosure and nothing was withheld, so that at the close of the hearing the question whether the accused was or was not a fugitive from justice was one of fact. Not so in this case, since, after the admissions, we have not a single fact left to show that the relator fled from the State of Tennessee.

(3.) In that case there was nothing but the oath of the accused that he was not in the demanding State at the time charged in the indictment, and that was of no consequence against all the other proof to show that he was. His oath was not conclusive, whereas in the case at bar we have an admission that is conclusive
44 that he was not in the State at the time, and nothing to place against it unless we are to presume that the crime was committed on the 2d day of July, when no one claims that it was. The court ought not to presume that the crime was committed on that day against the allegations of the indictment and without any claim from any source that it was. If presumptions are to be made in such a case, they should be in favor of personal liberty and not against it.

But the question whether the relator committed larceny in the State of Tennessee at any time when he was personally present there is not really in the case at all, since there is not now and never was any serious claim that he was in that State when the crimes charged were committed, otherwise than constructively. Constructive presence in the demanding State is the sole basis of the claim that the relator fled from its justice, and as already suggested, there is no case or authority that I am aware of that sustains such a claim. All the cases are the other way, and we must either disregard these cases or adopt the fiction that the offenses were really committed by the relator while he was in the State on July 2d, 1901.

It may before closing be profitable to call special attention to a case quite similar, since it shows how such cases as this are considered and disposed of by courts in the demanding State of Tennessee. I refer to the case of *State of Tennessee v. Jackson* (1 L. R. An. 370) which is quite instructive. It appears that Jackson resided in Chicago. He sold to the prosecutor, who resided at Chattanooga, a horse, the bargain having been made by correspondence. The horse was shipped to the purchaser by rail at the place last named and he remitted by mail to Jackson at Chicago the purchase price. When the horse arrived his qualities were found to be such that the purchaser claimed to have been defrauded out of the price by false and fraudulent statements. He proceeded to obtain a warrant from a justice of the peace at Chattanooga against Jackson in Chicago, charging him with obtaining money by fraud and placed the warrant in the hands of a detective who made an affidavit that Jackson had fled from the State of Tennessee and had taken refuge in the State of Illinois. On this affidavit and warrant he procured

a requisition from the governor of Tennessee on the governor of Illinois for the delivery to him of Jackson. Armed with these papers the detective proceeded to Illinois and obtained a warrant from the governor of that State for the arrest of Jackson. He arrested him on the warrant, hurried him off to Tennessee and there had him tried before the justice of the peace, convicted and sent to jail. It will thus be seen that Jackson was not only extradited from his home in another State but actually tried and convicted in the demanding State. But Jackson sued out a writ of *habeas corpus* in Tennessee and was discharged on the ground that all the proceedings were based upon a falsehood, namely, that he had fled from Tennessee where he had never been before.

The opinion of the court is very brief but pointed. After
45 citing the act of Congress the learned judge said: "According to the provisions of this law there must be not only the commission of the crime, but the person charged must be a fugitive from the State in which it was committed before the executive authority can be called into action. Jackson was not a fugitive. He had not in all his life been in Tennessee; had never fled from it; and his case did not fall within the positive terms of this law. The oath of the detective was false, and the governors of the two States imposed upon. The whole proceeding was a fraud upon the law. If this arrest and imprisonment are to be maintained the opportunities for wrong and abuse of law will be great and widespread. Commercial transactions are largely conducted by mail and by telegraph. If the seller at one end of the line and the buyer at the other, with the aid of detectives, in cases of dispute and controversy among them, are to be allowed, under such proceedings as these, to have the citizens of one State carried to another State for trial under the allegation that the person charged has fled, instances of oppression may not be few."

It would be quite difficult to point out any material distinction between that case and the one at bar. It is quite clear that should we send the relator to Tennessee he would be entitled there to his discharge by the same court that discharged Jackson on the facts now before us. That court held that the accused party could not be deprived of his liberty by executive action based upon the false affidavit of a detective that he had fled from Tennessee to Illinois. That, in my opinion, is a safe precedent to follow in this case. Some one in this case has made just such an affidavit. That must follow from the admission that the relator was not in the demanding State at the times stated in the indictment as the dates when the alleged crimes were committed. On the hearing in this case upon the return of the writ, the State of Tennessee could have shown all the facts and circumstances of the alleged crime for which it had demanded the surrender to it of the person of the relator, as this State did in the *Roberts case* (*supra*). But instead of taking that course, all the facts and circumstances are left clouded in mystery, except so far as they are disclosed by the admissions referred to. When it admitted that the relator was not in the State at the times laid in the indictment, and gave no other light as to the facts, the case for

detention failed. The State of Tennessee does not ask for the surrender of the relator on the ground that he committed any crime in that State on the 2d day of July, 1901, nor does it even suggest that its prosecuting officer made any mistake in stating the 24th of June as the true date of the commission of the offense. The relator is claiming the benefit and protection of the laws of this State which guarantee to him his liberty against all unlawful restraint. If he has actually fled from the justice of the demanding State, of course he ought to be surrendered; but it is admitted that he did not, and it is safe to say that no one believes for a moment that he did except, possibly, in the same way and in the same sense that Jackson
46 fled from the same State in the case cited. Personal liberty must rest in this State upon a very frail and unsafe basis if this court can be induced to send the relator to Tennessee upon such a vague and fanciful conjecture as that which is at the foundation of the fiction that he may in fact have committed the crime on the 2d of July, and that the prior dates stated by the prosecuting officer of that State are the result of some error or mistake. When the State of Tennessee, or some one authorized to speak for it, is willing to assure us that the suggestion is based upon fact and not upon fiction, it will be timely then to entertain it, but until then the courts of this State should treat its solemn admission upon the record according to its fair scope and meaning, which obviously is that the relator was not in the State when the crimes charged were committed. I am in favor of reversing the order.

HAIGHT, *J.* (dissenting):

The relator was arrested by the respondent and held in custody by virtue of a warrant issued by the governor of the State of New York, in which the respondent was required to arrest the relator and deliver him into the custody of one Vernon Sharp, to be taken back to the State of Tennessee, from which he had fled, pursuant to a requisition of the governor of that State. The warrant recites the following facts as having been established before the governor of this State. "It having been represented to me by the governor of the State of Tennessee that Charles E. Cochran stands charged in that State with having committed therein, in the county of Davidson, the crimes of larceny and false pretenses, which the said governor certifies to be crimes under the laws of said State, and that the said Chas. E. Cochran has fled therefrom and taken refuge in the State of New York; and the said governor of the State of Tennessee having, pursuant to the Constitution and laws of the United States, demanded of me that I cause the said Chas. E. Cochran to be arrested and delivered to Vernon Sharp, who is duly authorized to receive him into his custody and convey him back to the said State of Tennessee, which said demand is accompanied by copies of indictments, and other documents, duly certified by the said governor of the State of Tennessee to be authentic and duly authenticated, and charging the said Chas. E. Cochran with having committed said crimes *and fled from the said State* and taken refuge in the State of New York."

Cochran procured a writ of *habeas corpus* to issue for the purpose

of obtaining his discharge. On the return of the writ, the attorneys for the parties stipulated "that three indictments were attached to the requisition papers, sent by the governor of the State of Tennessee to the governor of the State of New York, for the extradition of Chas. E. Cochran, that each of said indictments was found on the 26th day of February, 1902, and that the alleged crimes *were charged in said indictments* to have been committed on the 1st day of May, 1901, on the 8th day of May, 1901, and on the 24th day of June, 1901, respectively." It was further conceded by coun-
47 sel of the respective parties "that the relator was not within the State of Tennessee between the 1st day of May, 1899, and the 1st day of July, 1901." It was also conceded that the relator "*was* in the State of Tennessee on the 2d day of July, 1901." Taking the two stipulations together, it appears that the relator was not in the State of Tennessee on the dates charged in the indictment, but that he *was* in that State eight days after the date charged in the last indictment. In no place is it stipulated that he was not in the State at the time the offenses charged were committed. If this was an accidental omission, it has not been supplied by any of the evidence before us. The relator subscribed and verified the petition upon which the writ of *habeas corpus* was issued. In it he alleges "that *it did not* appear that there was any evidence before the governor of the State of Tennessee at the time he issued his demand that your petitioner was personally or constructively within the limits of the State of Tennessee when the crimes are *alleged* to have been committed." In his affidavit traversing the return to the writ he states that he had read the indictments before the governor of the State of New York upon which his warrant of arrest was issued and that those indictments charged him with the commission of the crimes of larceny and false pretenses, specifying the dates named in the indictments. He then states that he was not in the State of Tennessee at any time during the months of March, April, May or June, 1901. He also was sworn upon the hearing and gave oral testimony, in which he reiterates that he was not in the State of Tennessee during the dates mentioned in the indictments, but concedes that he was there on the 2d day of July, 1901. In neither the petition, affidavit or testimony does he swear that he was not in the State when the offenses charged were committed, but has refrained from so testifying.

There are cases in which time is a necessary ingredient of the offense, as for instance the violation of the Sunday laws; but, barring these exceptions, I do not understand that the precise time is a necessary ingredient of crimes, either under our code or the common law. Section 280 of our Code of Criminal Procedure provides that "the precise time at which the crime was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the crime." This provision of the code is a substantial enactment of the common law upon the subject. (2 Hawk. P. C., 2 Ch. 46; 1 Hale P. C. 361; 1 Arch. Crim. Pr. 85; *Com. v. Harrington*, 3 Pick. 26; *People v. Stocking*, 50 Barb. 573;

Regina v. Firth, 11 Cox C. C. 234; *People v. Emerson*, 25 N. Y. S. R. 466; *People v. Jackson*, 111 N. Y. 362–369.)

As we have seen, the last indictment charged the crime as having been committed on the 24th day of June. Time is not a material ingredient of the crimes of larceny or false pretenses; it would, 48 therefore, have been competent upon the trial to show that the offenses charged were actually committed on the 2d day of July, when the relator was in the State, instead of the 24th day of June. The indictments were before the governor; they charged the commission of the crime of larceny. The usual allegation is that he did then and there take, steal and carry away, which imports the presence of the person charged. Under the statute a charge may be established before the governor by the production of a copy of the indictment. It, therefore, furnishes some evidence upon which the governor may act. As we have seen, the relator has neglected to show, either by stipulation or by his own testimony, that he was not actually present at the time the offenses charged were committed. He has confined his testimony to showing that he was not there on the particular dates specified in the indictment. This is not sufficient. It consequently follows that the contention of the relator to the effect that the governor had no power to issue the warrant for his arrest and his return to the State of Tennessee for the reason that he was not personally present in that State when the offense was committed is not raised by the record in these proceedings.

The warrant upon which the relator is detained recites all the facts necessary to give the governor jurisdiction to issue it. It is not contended that it is informal or defective in any particular. It recites that the governor of Tennessee presented papers to the governor of this State, duly authenticated, including copies of the indictments found, charging the relator with having committed the crimes of larceny and false pretenses in that State, and that he "has fled therefrom and taken refuge in the State of New York." This, if true, is sufficient to authorize the governor of this State to issue the warrant for his arrest and return to the State of Tennessee. The papers presented to the governor, upon which he made his determination to issue the warrant, have not been returned or their contents made to appear by the relator, either in his petition or traverse. They, consequently, are not before us, and we are unable to determine whether the conclusion of the governor was proper or without support of evidence.

In the case of *People ex rel. Draper v. Pinkerton* (77 N. Y., 245) the question under consideration appears to have been squarely decided. It is stated in the opinion that "the only material question which seems to be presented in this case is whether a warrant of the governor of this State for the arrest of a fugitive from justice of another State containing the recitals of facts necessary to confer authority under the Constitution and laws of the United States is a sufficient justification for holding the prisoner when up on *habeas corpus*, without producing the papers or evidence upon which the governor acted. *We have no doubt but that the recitals are to be taken as prima*

facie, at least, true, and that the return setting forth the warrant containing such recital is sufficient."

In the case of *People ex rel. Jourdan v. Donohue* (84 N. Y., 49 438) Finch, J., in delivering the opinion of the court, says: "The sufficiency of the executive warrant to justify the detention of the prisoner is the sole question raised by the writ of *habeas corpus*, and presented on this appeal. * * * Where, however, the papers upon which the warrant is founded are not produced, but are withheld by the executive in the exercise of his official discretion and authority, we can look only to the warrant itself and its recitals for the evidence that the essential conditions of its issue have been fulfilled." He then proceeds to state that all the essential requirements of the Constitution and statute are contained in the recitals of the warrant, and concludes by affirming the order dismissing the writ of *habeas corpus*.

In the very recent case of *Terlinden v. Ames* (184 U. S. 270–278) Chief Justice Fuller says: "The settled rule is that the writ of *habeas corpus* cannot perform the office of a writ of error, and that, in extradition proceedings, if the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offense charged is within the terms of the treaty of extradition, and the magistrate, in arriving at a decision to hold the accused, has before him competent legal evidence on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused for the purposes of extradition, such decision cannot be reviewed on *habeas corpus*. (*Ornelas v. Ruiz*, 161 U. S. 502–508, and cases cited; *Bryant v. United States*, 167 U. S. 104.)" And again, he concludes by saying: "The decisions of the executive department in matters of extradition within its own sphere, and in accordance with the Constitution, are not open to judicial revision; and it results that where proceedings for extradition, regularly and constitutionally taken under the acts of Congress, are pending, they cannot be put an end to by writs of *habeas corpus*." (See, also, *Matter of Clark*, 9 Wend. 212.)

In the case of *Roberts v. Reilly* (116 U. S. 80) we have a case in many respects very similar to the one under consideration. In that case the relator had been indicted in the State of New York for grand larceny. A requisition was made by the governor for his extradition from the State of Georgia. The governor of that State issued his warrant upon which he was arrested and held in custody. *Habeas corpus* was then issued by the district court of the southern district of Georgia. The accused made an affidavit denying his guilt, and also denying that he was in the State of New York on the day laid in the indictment as the date of the offense; but he did not deny that he was in the State at about that date.

Mr. Justice Matthews, in delivering the opinion of the court, says with reference to the claim that the relator was not a fugitive from justice, "that it is a question of fact which the governor of the State, upon whom the demand is made, must decide, upon such evidence as he may deem satisfactory. * * * The determination of the

fact by the executive of the State in issuing his warrant of
50 arrest upon a demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof." The judgment of the circuit court, remanding the prisoner to the custody of the agent of the State of New York, was affirmed. It will be observed that in that case the relator showed that he was not in the State at the date laid in the indictment; but this did not overcome the presumption of fact found by the governor, that he was a fugitive from justice.

Article 4, section 2, subdivision 2 of the Constitution of the United States provides that "a person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

The Revised Statutes of the United States, section 5278, provides that "whenever the executive authority of any State or Territory demands any person as a fugitive from justice of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found, or of an affidavit made before a magistrate of any State or Territory, charging the person demanded of having committed treason, felony, or other crime, certified as authentic by the governor or chief of police of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause a notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive and to cause him to be delivered to such agent when he shall appear."

It will be observed that under the Constitution and statute, to which we have referred, the application must be made to the "executive authority" of the State or Territory to which the person charged with the crime has fled. The duty, therefore, devolves upon such executive authority to determine all the questions of fact which arise under the Constitution and statute. In this State the executive authority is vested in the governor. When the application was made for the arrest of the relator by the governor of Tennessee it became the duty of the governor of this State to determine: (1) Whether a crime under the laws of Tennessee was charged as having been committed by the relator. (2) Whether he was a fugitive from justice of that State. It appears that the governor has determined these questions from his recitals in the warrant. The first question was established by the production before him of the indictments found duly certified and authenticated, and the second by the indictments and other documents duly certified by the governor of the State of Tennessee to be authentic. Neither the Constitution nor the statutes make

any provision for a review of the determination of the
51 governor, but our own statutes give to every person deprived of his liberty the right to apply for a writ of *habeas corpus*, and in case he is imprisoned by virtue of a warrant of the executive, under a demand for extradition, section 827 of the Code of Criminal Procedure gives him the right to a review for the purpose of determining his identity, whether he is the person charged with crime under the demand for extradition. Under this writ the courts doubtless have the power to determine whether the executive has acted within the powers given him by the Constitution and statutes of the United States. When the papers upon which he has acted have been returned and become a part of the record in the proceedings upon *habeas corpus*, and it appears from such papers that no crime is charged as having been committed in the State demanding the return of the person, it has been held, though not without criticism, that the court may discharge him (*People ex rel. Lawrence v. Brady*, 56 N. Y., 182), but where the papers upon which the governor has acted in making his determination to issue the warrant are not before the court, and the contents of such papers do not appear, the recitals of facts found by him, contained in the warrant, must be taken as true, so far as the review by *habeas corpus* is concerned.

The prevalence of crimes committed in one State by persons actually in another State, through innocent agents employed by them, such as the forwarding of forged drafts, checks and other instruments through the mails, express agencies or otherwise, for the purpose of procuring money or other property thereon, makes it desirable that the question should be determined as to whether, under the Constitution and statute- of the United States, a person found in one State can be surrendered up, to be taken to another State for trial, for a crime committed therein, through some innocent agency of his, when he was only constructively present in the person of his agent. That question, however, ought to be determined by the Supreme Court of the United States. The conclusions reached upon the points above discussed render it unnecessary for this court to determine it in this case.

The order appealed from should be affirmed.

Parker, Ch. J., Gray and Vann, JJ., concur with Cullen and O'Brien, JJ.; Werner, J., concurs with Haight, J.

Ordered accordingly.

52 Court of Appeals, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Appellant,
vs.
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Respondent.

To the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York:

And now comes James L. Hyatt, chief of police of the city of Albany, N. Y., by Scherer & Downs, his attorneys, and complains that in the record and proceedings and also in the rendition of a judgment — a plea in the suit between the People of the State of New York on the relation of Charles E. Corkran, relator, and James L. Hyatt, as chief of police of the city of Albany, N. Y., defendant, which is in the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, and the said court of appeals having rendered a decision reversing said judgment theretofore rendered in
53 the said supreme court of the State of New York on the 23d day of May, 1902, affirming the judgment of the special term of the said supreme court rendered on the 19th day of March, 1902, in favor of the said defendant, and dismissing the writ of *habeas corpus* prayed for by the relator herein and remanding the said Charles E. Corkran to the custody of the said defendant, James L. Hyatt, as chief of police of the city of Albany, N. Y., and which said decision of the said court of appeals allowed the said writ and discharged the said Charles E. Corkran from the custody of the said James L. Hyatt, as chief of police of the city of Albany, N. Y., and wherein was drawn in question the validity of the statute and of an authority exercised under the United States, and the decision is against their validity, and wherein a right was claimed under the Constitution, and also under the statutes of the United States, and the decision is against the right specially set up and claimed, all of which appears in the record and proceedings in said suit, manifest error has happened to the great damage of the said James L. Hyatt, as chief of police of the city of Albany, N. Y.

Wherefore, the said James L. Hyatt, as chief of police of the city of Albany, N. Y., by his attorneys aforesaid, prays for an allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States.

SCHERER & DOWNS,
Attorneys for James L. Hyatt, as Chief of Police of the City of Albany, N. Y.

Office and post-office address, No. 13 N. Pearl St., Albany, N. Y.

54 [Endorsed:] Court of appeals The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y.,

respondent. Petition. Scherer & Downs, attorneys for respondent, office and post-office address, No. 13 North Pearl St., Albany, N. Y. Rec'd Oct. 9, 1902 Alton B. Parker Ch. J.

55 Court of Appeals, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Appellant,

vs.

JAMES L. HYATT, Chief of Police of the City of Albany, N. Y., Respondent.

In this cause application having been made to the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York, that being the highest court of record in this State in which said cause can be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and the rules of practice of the Supreme Court of the United States, and for the fixing and approving of the bond on the removal of the said cause to the Supreme Court of the United States,

It is hereby ordered, that the said writ of error be, and the same is hereby, allowed, and the same may be issued by any officers authorized to issue the same, and the penalty in the bond is hereby fixed at the sum of one thousand dollars with the Fidelity
56 and Deposit Company of Maryland, as surety thereon.

Dated October 9, 1902.

ALTON B. PARKER, *Ch. J.*

57 [Endorsed:] Court of appeals. The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y., respondent. Order for writ of error. Scherer & Downs, attorneys for respondent, Office and post-office address, No. 13 North Pearl St., Albany, N. Y.

58 UNITED STATES OF AMERICA, *ss:*

[Seal of the U. S. Circuit Court, Northern District, N. Y.]

The President of the United States of America to the honorable the judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of New York on the relation of Charles E. Corkran, relator, and James L. Hyatt, as chief of police of the city of Albany, N. Y., wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute or of an authority exercised under said State, on the ground of their being repugnant to the Constitution

treaties or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the
59 great damage of the said James L. Hyatt, as chief of police of the city of Albany, N.Y., as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 10th day of October, in the year of our Lord one thousand nine hundred and two.

W. S. DOOLITTLE,
Clerk of the United States Circuit Court, North. District of New York.
By C. W. HIGGISON, *Deputy.*

Allowed by—
ALTON B. PARKER,
Chief Judge of the Court of Appeals of the State of New York.

60 [Endorsed:] Court of appeals. The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y., respondent. Writ of error. Scherer & Downs, attorneys for respondent, office and post-office address, No. 13 North Pearl St., Albany, N. Y.

61 In the Court of Appeals, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Relator,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Defendant, Respondent.

The defendant assigns the following errors in the final decision of this court filed herein upon October 7, 1902:

I. The court erred in holding and deciding that the relator was

entitled to a writ of *habeas corpus*, and the relief prayed for in his petition and in discharging the relator; and in reversing the order of the supreme court dismissing the said writ of *habeas corpus* and remanding the relator to the custody of the defendant.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the relator and dismissing the writ of *habeas corpus*, be affirmed in all things and that the said relator be remanded to the custody of the defendant.

III. The court erred in deciding that the relator should not be remanded to the custody of the defendant for the purpose of being sent back to the State of Tennessee, as required by the pro-
62 visions of the Constitution of the United States, article 4, § 2, subd. 2, and in deciding that the relator was not a fugitive from justice within the intent and meaning of that provision of the Constitution of the United States.

IV. The court erred in deciding that the relator was entitled to a writ of *habeas corpus* and to his discharge on the ground that he was not a fugitive from justice, in that it was a denial of the right of interstate rendition and a decision against the validity of the authority and power under the Constitution of the United States and under § 5278 of the Revised Statutes of the United States, being chapter 7 of the laws of Congress passed February 12, 1793.

V. The court erred in assuming to review the decision of the governor of the State of New York on *habeas corpus* after the relator had been heard before the governor of the State of New York, and the governor of the State of New York had issued his warrant for the return of the said Charles E. Corkran to the State of Tennessee, and in denying the right of the governor under the Constitution of the United States and the laws of Congress to return the said Charles E. Corkran to the State of Tennessee.

VI. The court erred in deciding that the relator was not a fugitive from justice within the meaning of the Constitution of the United States, article 4, § 2, subd. 2, and within the meaning of the laws of Congress, chapter 7, passed February 12, 1793, and § 5278 of the Revised Statutes of the United States.

63 VII. The court erred in deciding against the validity of the authority exercised by the governor of the State of New York under the laws of Congress, and the authority of the United States and the Constitution in directing the return of the said Charles E. Corkran to the State of Tennessee.

VIII. The court erred in deciding in favor of the validity of the statutes of the State of New York and of the authority exercised under the said statutes and decisions of said court allowing a writ of *habeas corpus* in a case of this kind and in granting the said writ of *habeas corpus* and in discharging the relator, the said statutes being the Laws of 1876, chapter 448 and the Laws of 1880, chapter 178, sections 2015 to 2066, inclusive, as amended.

IX. The court erred in granting the writ of *habeas corpus* herein and ordering the discharge of the relator on the ground that he was not a fugitive from justice within the meaning of the Constitution of the United States and laws of Congress, and in not dismissing

the said writ and remanding the said Charles E. Corkran to the custody of the defendant to be returned to the State of Tennessee in accordance with the directions of the warrant of the governor of the State of New York, and in assuming to review the decision of the governor of the State of New York and deciding against the validity of the Constitution and authority of the United
64 States under which the governor of the State of New York acted.

SCHERER & DOWNS,
Attorneys for Defendant.

Office and post-office address, No. 13 N. Pearl St., Albany, N. Y.

65 [Endorsed:] Court of appeals. The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y., respondent. Assignment of errors. Scherer & Downs, attorneys for respondent. Office and post-office address, No. 13 North Pearl St., Albany, N. Y.

66 STATE OF MARYLAND, } ss:
City of Baltimore, }

Albert S. Gill, being duly sworn, deposes and says that he is over the age of twenty-one years. That on the 18th day of October, in the year of our Lord one thousand nine hundred and two, he personally served at the city of Baltimore, Maryland, the within citation on Charles E. Corkran, by delivering to and leaving with the said Charles E. Corkran in person a true copy of the same. Deponent further says that at the time of making such service he also served upon the said Charles E. Corkran a copy of the bond filed in the above case. Deponent further says that he knew the person so served as aforesaid to be the same person mentioned and described in the said citation.

ALBERT S. GILL.

Subscribed and sworn to before me this 21 day of October, 1902.

[Seal of Thomas Kell Bradford, Notary Public, Baltimore, Md.]

THOS. KELL BRADFORD,
Notary Public.

67 UNITED STATES OF AMERICA, ss:

To the People of the State of New York on the relation of Charles E. Corkran, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the New York court of appeals, in a suit wherein the People of the State of New York on the relation of Charles E. Corkran is defendant in error, and James L. Hyatt, as chief of police of the city

of Albany, N. Y., is plaintiff in error, to show cause, if any there be, why the judgment rendered against the said James L. Hyatt, as chief of police of the city of Albany, N. Y., plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alton B. Parker, chief justice of the court of appeals of New York, this 9th day of October, in the year of our Lord one thousand nine hundred and two.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of New York.

68 [Endorsed:] Court of appeals. The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y., respondent. Original citation. Scherer & Downs, attorneys for respondent, office and post-office address, No. 13 North Pearl St., Albany, N. Y. Due and personal service of a copy of the within citation is hereby admitted this 18 day of Oct., 1902. Charles E. Corkran. Moot, Sprague, Brownell & Marcy, attorneys for plaintiff.

69 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, clerk of the court of appeals of the State of New York, do hereby certify that the foregoing papers, composed of a copy of the return on appeal to the court of appeals in the case of The People *ex rel.* Charles E. Corkran against James L. Hyatt, as chief of police of the city of Albany, plaintiff in error, and of the whole thereof upon which the said court acted in rendering judgment therein; the judgment of the said court rendered thereon, and the opinion therein delivered on the decision thereof, are true and correct copies of the originals remaining on file and of record in this office, and that the petition for the writ of error; order for the writ of error and fixing amount of surety; the writ of error; assignment of errors and the citation to the Supreme Court of the United States, and affidavit showing service thereof, are the originals thereof, and that the whole thereof constitute the return to the writ of error herein.

In witness whereof, I have hereunto set my hand and affixed my official seal at the city of Albany this twenty-seventh day of October, A. D. one thousand nine hundred and two.

Seal Court of Appeals, State of New York.

W. H. SHANKLAND, *Clerk.*

Endorsed on cover: File No. 18,720. New York court of appeals. Term No. 492. James L. Hyatt, as chief of police of the city of Albany, N. Y., plaintiff in error, *vs.* The People of the State of New York on the relation of Charles E. Corkran. Filed October 30, 1902.